

OGC Has Reviewed

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Approved For Release 2001/09/03 : CIA-RDP84-00709R000400070072-3

Chief, CFD
VIA: Chief, SSS
Legal Staff

3 February 1950

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Claim for Overtime - [REDACTED]
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1. Mr. [REDACTED] has submitted a claim for overtime performed overseas during the years 1947, 1948 and 1949, totaling 147 hours. His first date of overtime is 4 July 1947, and his latest, 26 August 1949. The overtime - with the exception of 14 hours emergency work on 8 December 1949 - is the result of what appears to be a regular increase in workload.

2. Overtime compensation is basically extended to employees of the U. S. Government under the Federal Employees Pay Act of 1946 (as amended), (Title 5 USCA § 911 & § 912). Various Agency regulations have been issued pursuant to this authority and the provisions vary slightly over the period for which overtime is claimed. Some inconsistencies and conflict between the Administrative Instructions and the General Administrative Instructions have been noted, and it appears advisable, at this point, to review the basic legislative authority behind these regulations.

3. Section 911 of Title 5 USCA, provides that "officers and employees ** shall, in addition to their basic compensation, be compensated for all hours of employment, officially ordered or approved, in excess of forty hours in any administrative workweek, **." In using the word "shall" it appears clear that Congress intended to vest in the employee a clear right to compensation for all work in excess of forty hours in an administrative workweek which is "officially ordered or approved." An agency has discretionary leeway only in the manner in which the overtime must be "ordered or approved." If it imposes conditions which are unnecessarily complicated or restrictive, they may have the effect of creating an onerous burden which essentially denies the employee a right which Congress intended to grant. The rates of overtime compensation are scaled to grade, but there is no ground for excluding any individual on the basis of his grade. Section 912 provides that "the heads of departments ** may by regulation provide for the granting of compensatory time off from duty, in lieu of overtime compensation for irregular or occasional duty in excess of forty hours in any regularly scheduled administrative workweek **." It is well established that the issuance of regulations granting compensatory leave is not mandatory, but the agency, once having decided to permit such leave, must respect certain restrictions. First, it is applicable only to emergency or unscheduled overtime; second, it must be requested by the employee. The agency may fix time limits within which compensatory leave must be used, and although the right to compensation for overtime is a vested one, the Comptroller has held

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(2nd Comp. Gen. 62) that when an employee requests compensatory time, but fails to take it within the stipulated limit, he shall forfeit his right not only to the compensatory time, but also to compensation for the basic overtime unless his failure was due to conditions beyond his control. Overtime regulations issued by the agency must naturally conform to the law contained in Section 911 and Section 912, and they are necessarily invalid to the extent that they are inconsistent with such legislative authority. Administrative Instructions are basic regulations for the Agency, which have been implemented by General Administrative Instructions issued by AGO. The AGO, of course, cannot exceed the scope of the basic instruction in granting rights and privileges; and although he may impose additional restrictions, they cannot have the final effect of defeating any basic rights to which the employee is otherwise entitled.

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4. Aside from fourteen hours worked on 8 December 1949 ("emergency ahead-revolution"), Mr. [REDACTED] claim appears to be based on a regular increase in workload. Reserving comment on the legality of certain provisions of old regulations now rescinded, allowance of Mr. [REDACTED] claim depends primarily on whether the overtime was "officially ordered or approved" in conformance with Agency regulations. Before a determinative finding can be made on each period of overtime claimed by Mr. [REDACTED] it will be necessary to know his rate or grade at the time, the nature of the overtime (i.e., "regular" or "emergency"), whether it was ordered or approved, and, if so, by whom.

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5. In passing, it is noted that there is some conflict between presently effective instructions. It does not appear to be completely clear that compensatory leave is related only to emergency overtime, and the requirement in GAI 11/7 of 18 April 1949, that compensatory leave must be taken within 90 days of the performance of overtime, is unauthorized to the extent that it exceeds the limitation established in Administrative Instruction 30-5 of 22 April 1949, restricting compensatory leave to two pay periods.

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Attache

1. [REDACTED] dtd 28 Nov. 1949 from [REDACTED], with schedule attached.

Office: shw

cc: Subject
Carono
Legal Decisions

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